

NO. 44790-8-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ROLAND K. DOUGLAS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR MASON COURT
The Honorable Amber Finlay, Judge
Cause No. 09-1-00177-4

BRIEF OF APPELLANT

THOMAS E. DOYLE, WSBA NO. 10634
Attorney for Appellant

P.O. Box 510
Hansville, WA 98340
(360) 638-2106

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	1
C. STATEMENT OF THE CASE	1
D. ARGUMENT	3
01. THERE WAS INSUFFICIENT EVIDENCE THAT DOUGLAS KNOWINGLY FAILED TO APPEAR FOR A REQUIRED APPEARANCE BEFORE THE COURT	3
02. A CONVICTION FOR BAIL JUMPING PURSUANT TO AN INFORMATION THAT FAILS TO ALLEGE THE PARTICULAR UNDERLYING CRIME MUST BE REVERSED	6
E. CONCLUSION	9

TABLE OF AUTHORITIES

	<u>Page(s)</u>
 <u>State of Washington</u>	
<u>Auburn v. Brooke</u> , 119 Wn.2d 623, 836 P.2d 212 (1992).....	7
<u>State v. Craven</u> , 67 Wn. App. 921, 841 P.2d 774 (1992)	4
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980).....	4
<u>State v. Green</u> , 101 Wn. App. 885, 6 P.3d 53 (2000)	8
<u>State v. Hopper</u> , 118 Wn.2d 151, 822 P.2d 775 (1992).....	6
<u>State v. Hubner</u> , 129 Wn. App. 499, 119 P.3d 388 (2005).....	4, 5
<u>State v. Hunter</u> , 29 Wn. App. 218, 627 P.2d 1339 (1981).....	5
<u>State v. Kitchen</u> , 61 Wn. App. 911, 812 P.2d 888 (1991)	8
<u>State v. Kjorsvik</u> , 117 Wn.2d 93, 812 P.2d 86 (1991).....	6, 7, 8,
<u>State v. Leach</u> , 113 Wn.2d 679, 782 P.2d 552 (1989).....	7
<u>State v. Pope</u> , 100 Wn. App. 624, 999 P.2d 51 (2000).....	8
<u>State v. Royse</u> , 66 Wn.2d 552, 403 P.2d 838 (1965).....	7
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	3, 4
 <u>Federal Cases</u>	
<u>In re Winship</u> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).....	3
 //	
 //	

Constitutional Provisions

U.S. Const. Amend. 6 6

U.S. Const. Amend. 14 3

Const. art. 1, § 3 3

Const. art. 1, § 22 (amend 10)..... 6

Statutes

RCW 9A.44.079..... 1

RCW 9A.76.170..... 1

Rules

CrR 2.1(b) 6

Other

2 C. Torcia, Wharton on Criminal Procedure (13th ed. 1990) 6

A. ASSIGNMENTS OF ERROR

01. The trial court erred in not taking count II, bail jumping, from the jury for lack of sufficient evidence.
02. The trial court erred in not taking count II, bail jumping, from the jury for lack of sufficiency of the information.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether there was sufficient evidence to support Douglas's conviction for bail jumping?
[Assignment of Error No. 1].
02. Whether the information charging bail jumping is defective in failing to allege the particular underlying crime?
[Assignment of Error No. 2].

C. STATEMENT OF THE CASE

01. Procedural Facts

Following remand for a new trial [CP 64-70], Roland K. Douglas was charged by first amended information filed in Mason County Superior Court January 23, 2013, with rape of a child in the third degree, count I, and bail jumping, count II, contrary to RCWs 9A.44.079 and 9A.76.170. [CP 57-58].

Trial to a jury commenced February 21, the Honorable Amber Finlay presiding. Neither objections nor exceptions were taken to the jury instructions. [RP 131]. Douglas was found guilty as charged, sentenced

within his standard range, and timely notice of this appeal followed. [CP 2-21, 34-35].

02. Substantive Facts

02.1 Rape: Count I

After receiving an anonymous phone call and confronting her then 14-year-old daughter A.J.S., C.K. contacted the police and filed a report. [RP 63-64, 73].

A.J.S. testified she and Douglas, who knew she was 14, engaged in sexual intercourse in March 2009 and that he became angry and punched a post when she later informed him that she and her mother had reported the incident to the police. [RP 73, 75-78, 82]. She also mentioned the incident to their mutual friend Brandon Pippins [RP 81], who initially told police Douglas admitted the incident before walking it back with the explanation that Douglas told him only that he had been charged with a sex offense. [RP 93-94]. When interviewed by Detective Heldreth, then 21-year-old Douglas, repeatedly said he would not admit he had sex with A.J.S. [RP 96, 105-07]. He did acknowledge that he had injured his hand punching a post. [RP 106].

02.2 Bail Jumping: Count II

The State introduced the following documents relating to this charge: amended order for pretrial release filed

08/20/12 [RP 113-14; State's Exhibit 2], order setting trial date and other hearings filed 08/20/12, which set the defendant's next appearance date at 09/24/12 [RP 114-15; State's Exhibit 3], clerk's minutes for hearing on 08/20/12 115-16; State's Exhibit 4], and clerk's minutes for hearing on 09/24/12, which indicate "(d)efendant failed to appear. State asks for bench warrant. Granted. \$10,000 bail. Warrant issued." [RP 116-17; State's Exhibit 5].

Douglas rested without presenting evidence. [RP 135].

D. ARGUMENT

01. THERE WAS INSUFFICIENT EVIDENCE
THAT DOUGLAS KNOWINGLY FAILED TO
APPEAR FOR A REQUIRED APPEARANCE
BEFORE THE COURT.

Due Process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.

Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

To prove the charge of bail jumping, the State had to prove that Douglas knowingly failed to appear for a required appearance before the court, which, in this case, translated to proof that he was the same person who had signed the order [State’s Exhibit 3] requiring his appearance September 24, 2012.

[W]hen criminal liability depends on the accused’s being the person to whom a document pertains(,) ... the State must do more than authenticate and admit the document; it also must show beyond a reasonable doubt “that the person named therein is the same person on trial.”

State v. Hubner, 129 Wn. App. 499, 502, 119 P.3d 388 (2005) (emphasis added) (footnotes omitted). The State must present some corroborating evidence, such as “booking photographs, booking fingerprints, eyewitness identification, or ... distinctive personal information.” Id. 129 Wn. App. at 503. If the State presents only documents bearing an identical name, the State produces insufficient evidence to support a criminal conviction

beyond a reasonable doubt. State v. Hunter, 29 Wn. App. 218, 221, 627 P.2d 1339 (1981). Nor does the State satisfy its burden simply because the defense presents no evidence refuting the claim of identity. State v. Huber, 129 Wn. App. at 503.

In Huber, where the defendant was charged with bail jumping, the State, as here, presented only documentary evidence (information, order, clerk's minutes) referencing Huber, which this court, in reversing, held was insufficient to establish that Huber was the person named in the documents. Similarly, here the State produced nearly identical documentary evidence: information, orders and clerk's minutes. [RP 113-17; State's Exhibits 2-5]. The State did not call any witnesses or make any other attempt to show that the exhibits related to the same Douglas who was then before the court: no booking fingerprints, eyewitness identification or distinctive personal information.

Under these facts, given that the State failed to carry its burden of proving that Douglas was the same person named in the underlying documents, his conviction must be reversed and dismissed.

//

//

//

//

02. A CONVICTION FOR BAIL JUMPING
PURSUANT TO AN INFORMATION THAT
FAILS TO ALLEGE THE PARTICULAR
UNDERLYING CRIME MUST BE
REVERSED.

The constitutional right of a person to be informed of the nature and cause of the accusation against him or her requires that every material element of the offense be charged with definiteness and certainty. 2 C. Torcia, Wharton on Criminal Procedure Section 238, at 69 (13th ed. 1990). In Washington, the information must include the essential common law elements, as well as the statutory elements, of the crime charged in order to appraise the accused of the nature of the charge. Sixth Amendment; Const. art. 1, Section 22 (amend. 10); CrR 2.1(b); State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Charging documents that fail to set forth the essential elements of a crime are constitutionally defective and require dismissal, regardless of whether the defendant has shown prejudice. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). If, as here, the sufficiency of the information is not challenged until after the verdict, the information “will be more liberally construed in favor of validity....” Kjorsvik, 117 Wn.2d at 102. The test for the sufficiency of charging documents challenged for the first time on appeal is as follows:

(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?

Kjorsvik, 117 Wn.2d at 105-06.

It is not fatal to an information that the exact words of the statute are not used; it is instead sufficient “to use words conveying the same meaning and import as the statutory language.” State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). The information must, however, “state the acts constituting the offense in ordinary and concise language....” State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965). The question “is whether the words would reasonably appraise an accused of the elements of the crime charged.” Kjorsvik, 117 Wn.2d at 109.

The primary purpose (of a charging document) is to give notice to an accused so a defense can be prepared. (citation omitted) There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted the crime.

Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).

Douglas was charged with bail jumping in the amended information as follows:

In the County of Mason, State of Washington, on or about the 24th day of September, 2012, the above-named Defendant, ROLAND K. DOUGLAS, did commit BAIL JUMPING, a class C felony, in that said defendant having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state, to wit: the Mason county Superior Court in the case of State of Washington v. DOUGLAS K. DOUGLAS, Mason County cause number

09-1-00177-4, did fail to appear as required: contrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.

[CP 58].

In Washington, to be convicted of bail jumping, the defendant must be charged with “a particular [underlying] crime.” State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51 (2000). Using this standard, our courts have invalidated a number of generic charging attempts. For example, this court, in State v. Green, 101 Wn. App. 885, 888, 6 P.3d 53 (2000), held an information charging a defendant with bail jumping insufficient where the charging language, as here, did not include the underlying offense but merely referenced the cause number.

By failing to list the underlying offense, this information did not appraise Douglas of the nature of the charge of bail jumping. The information is thus defective, and the conviction obtained on this charge must be reversed. State v. Kitchen, 61 Wn. App. 911, 812 P.2d 888 (1991). Douglas need not show prejudice, since Kjorsvik calls for a review of prejudice only if the “liberal interpretation” upholds the validity of the information, which cannot be done in this case. See Kjorsvik, 117 Wn.2d at 105-06.

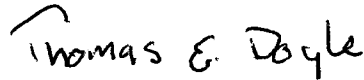
//

//

E. CONCLUSION

Based on the above, Douglas respectfully requests this court to reverse and dismiss his conviction for bail jumping.

DATED this 29th day of September 2013.



THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

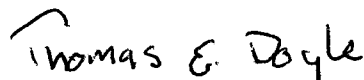
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Tim Higgs
timh@co.mason.wa.us

Roland K. Douglas #311586
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA 99362

DATED this 29th day of September 2013.



THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

DOYLE LAW OFFICE

September 29, 2013 - 11:57 PM

Transmittal Letter

Document Uploaded: 447908-Appellant's Brief.pdf

Case Name: State v. Douglas

Court of Appeals Case Number: 44790-8

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

Sender Name: Thomas E Doyle - Email: **ted9@me.com**

A copy of this document has been emailed to the following addresses:
timh@co.mason.wa.us